

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.270 of 2004

Date of Decision : 12.07.2007

Shankar and another

.....Appellants

versus

Kishan Lal and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.C.B.Goel, Advocate for the appellants.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby a suit for permanent injunction was decreed against the appellants from occupying the common *rasta* and interfering in construction of the plaintiff and from stopping the affixing of the ventilators and opening of the *moris* shown red colour in the *pucca* wall of the plaintiff marked by the letters EC.

Both the Courts below have recorded a concurrent findings of the fact on the basis of proper appreciation of evidence that the plaintiff is entitled to affix the ventilators and can open *moris* towards the common Rasta. The said finding has been recorded on the basis of the report of the Local Commissioner Shri Mool Chand, who was examined as PW-4. The report submitted by the Local Commissioner is produced as Exhibit P-3 and the site plan has been produced as Exhibit P-4. The Courts have considered the Statement of defendant Shankar Lal to the effect that Sodina has opened

the *mori* 14-15 years ago when their land was vacant. It is also admitted that Sodina had opened the *mori*, ventilators, door on the eastern side of his wall. Thus, it was found that the dispute arises is in respect of a passage where the inhabitants have also their doors, windows and ventilators.

Such finding is based on proper appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration. Thus, I do not find that any substantial question of law arises for the consideration of this Court in second Appeal. Consequently, the present appeal stands dismissed.

12-07-2007

*mohinder

(HEMANT GUPTA)
JUDGE